

# Exhibit B

## CENTER ON RACE, POVERTY & THE ENVIRONMENT

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August 8, 2007

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**Re: Notice of Intent to Sue for Violations of the Federal Water Pollution Control Act (Clean Water Act)**

Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton and Joseph Swan ("the Kivalina residents") hereby give notice to Teck Cominco Alaska Incorporated ("Teck Cominco") of the Kivalina residents' intent to sue Teck Cominco for violations of the Clean Water Act for failure to comply with its Authorization to Discharge Under the National Pollutant Discharge Elimination System ("NPDES Permit") during its operations at the Red Dog Mine, located 55 miles northeast of Kivalina, Alaska, at latitude 68° 4' 17" and longitude 162° 54' 56".

Through this notice of intent to sue, pursuant to 33 U.S.C. §§ 1365 (a) and (b) of the Clean Water Act, the Kivalina residents give Teck Cominco and Red Dog, the Administrator of the Environmental Protection Agency ("EPA"), the Regional Administrator of U.S. EPA Region 10, the Commissioner of the Alaska Department of Environmental Conservation, the Commissioner of Alaska Department of Fish and Game, the Alaska Attorney General and the U.S. Attorney General notice of their intent to sue Teck Cominco for its violations of the Clean Water Act.

Teck Cominco has violated and continues to violate the conditions of its NPDES Permit for Red Dog Mine (permit no. AK 003865-2 ("mine site permit")), by discharging to Middle Fork Red Dog Creek, pollutants and hazardous substances in violation of the types and quantities specified in its permit.

The mine site permit conditions that Teck Cominco has violated and continues to violate are:

- Condition I (A)(1) for total dissolved solids ("TDS"), which specified a daily maximum discharge of 196 mg/L, and a maximum monthly average discharge of 170 mg/L. This maximum was effective until June 15, 2004. The subsequent limit of 3900 mg/L was also violated.
- Condition I (A)(1) for cyanide, which specifies a daily maximum discharge of 9 ug/L and a maximum monthly average discharge of 4 ug/L.
- Condition I (H)(5), which specifies that whole effluent toxicity ("WET") may not exceed a daily maximum of 12.2 chronic toxic units ("TUC") and may not exceed a monthly average of 9.7 TUC.

Because the discharges of pollutants that Teck Cominco has reported and currently reports are in amounts exceeding these limitations, Teck Cominco is operating its mining, transportation and storage operations in violation of its NPDES permit.

#### **I. TECK COMINCO IS VIOLATING THE CLEAN WATER ACT BY FAILING TO COMPLY WITH ITS NPDES PERMIT.**

The linchpin of our country's effort to clean and preserve our waters is the Clean Water Act. Under 33 U.S.C. § 1342, all discharges of pollutants to the waters of the United States must be authorized by a NPDES permit, to ensure through water-quality-based standards that the discharges will not compromise the water quality of the receiving waters, or through technology-based standards that the discharges are kept to the minimum level achievable by current technology. Teck Cominco's mining operations have caused it to violate the terms of its permit on over 772 occasions, releasing contaminants and hazardous materials into the waters of the remote Alaskan wilderness in quantities that are not protective of environmental quality or human and animal health. Under 33 U.S.C. § 1365, the Clean Water Act provides the citizens with opportunity to enforce permit limitations, and Kivalina residents today notify Teck Cominco of their plans to enforce the terms of Teck Cominco's permit.

Teck Cominco's permit violations affect the Kivalina residents and other Native Alaskans that live in the vicinity of Teck Cominco's mining, transportation, and storage operations. The community relies on the waters of the Wulik River, downstream of Red Dog Mine Outfall 001 in Middle Fork Red Dog Creek, for drinking water and as a source of fish for its basic subsistence. The Kivalina residents

observe that the quality of their drinking water has greatly decreased since the mine began operating, noting strange tastes and colors in the water that make it offensive to consume. Residents also have seen changes in the location and quantity of marine mammals and fish that constitute their basic source of food. This has affected the way that the Kivalina residents conduct their basic life activities, and their ability to ensure an adequate supply of food for themselves and their families. Teck Cominco's violations of the Clean Water Act expose the community to dangerously contaminated drinking water, threaten the health of the marine and freshwater ecosystems on which the community depends, and deprive the community of the opportunity to continue exercising its traditional lifestyle without fear of illness or exposure to dangerous contaminants.

## **II. KIVALINA RESIDENTS NOTIFY TECK COMINCO OF THEIR INTENT TO SUE TECK COMINCO FOR VIOLATIONS OF THE MINE SITE NPDES PERMIT.**

Teck Cominco has violated the terms of its mine site permit (permit no. AK 003865-2) on more than 772 occasions. The Kivalina residents intend to sue Teck Cominco for all past and ongoing violations of its NPDES permits. Each of the violations alleged below is ongoing or capable of repetition.

### A. Total Dissolved Solids

**Condition I(A)(1) Daily Maximum Discharge violations.** Condition I (A)(1) for TDS of Teck Cominco's 1998 permit specifies a daily maximum discharge of 196 mg/L. This maximum was effective until June 15, 2004. The NPDES permit effective after June 15, 2004 until the present specifies a maximum TDS concentration at Outfall 001 of 3900 mg/L. Prior to June 15, 2004, Teck Cominco's operations at the Red Dog Mine caused Teck Cominco to discharge TDS through Outfall 001 in quantities approximately 20 times its maximum daily limits on every day in which the mine discharged. Although Teck Cominco is not required to report the concentration of TDS in its discharge on each day it operates, on the basis of the extremely high monthly average Teck Cominco reports and the narrow degree of deviation between the average value and the maximum value, it is statistically likely that Teck Cominco violates its permit for this parameter on every day in which it operates. The Kivalina residents intend to sue Teck Cominco for these violations on all dates that the mine was discharging through Outfall 001, including but not limited to:

**2003:** May 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14.

**2004:** May 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26.

**2005:** May 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; June 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,

27, 28, 29, and 30; July 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30; October 1, 2, 3, 4, 5 and 6.

**2006:** May 9, 10, 11, 12, 13, 14, 15 and 16; September 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30; October 1 and 2.

**2007:** June 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

In addition, Kivalina residents will sue Teck Cominco for every day in July, August and September 2007 that Teck Cominco violates the 3900 mg/L standard at Outfall 001. These additional violations are not quantified in the totals listed below in section III. The Kivalina residents are informed and believe that violations of Teck Cominco's permit conditions for TDS are ongoing. The Kivalina residents intend to sue Teck Cominco for any and all violations that occur during the 2007 discharge season.

**Condition I (A)(1) Monthly Average TDS Discharge violations.** Condition I (A)(1) for TDS of the 1998 permit specified a maximum monthly average discharge of 170 mg/L. That permit limitation was effective until June 15, 2004. After June 15, 2004, that permit limitation is only effective during Arctic Grayling spawning season, generally in May and June of each year. Teck Cominco has violated its permit limits on the monthly average for TDS in every month in which Teck Cominco discharged from Outfall 001 until June 15, 2004. The Kivalina residents intend to sue Teck Cominco for violation of the monthly average limit in the following months: May 2003, June 2003, July 2003, August 2003, May 2004, and June 2004. After June 2004, Teck Cominco violated its monthly average permit limitation during every Arctic Grayling spawning season, and Kivalina residents intend to sue Teck Cominco for violations of the monthly average limit in May 2005, June 2005, May 2006, June 2006, May 2007 and June 2007. The exact number of monthly violations is quantified in Section III, below.

#### B. Toxic Substances: Cyanide, WET

The Kivalina residents are informed and believe that Teck Cominco has violated and will continue to violate its NPDES permit conditions for a variety of other highly toxic substances, including cyanide and whole effluent toxicity (WET). These violations are ongoing or capable of repetition. The Kivalina residents intend to sue Teck Cominco for its violations of its permit for all discharges exceeding permit limits, including but not limited to the following dates:

**Condition I(A)(1) cyanide daily maximum discharge violations.** Condition I (A)(1) for cyanide specifies a daily maximum discharge of 9 ug/L. Teck Cominco exceeded its daily maximum permissible concentration of cyanide on May 10 and 13, 2003; June 17 and 24, 2003; July 1, 15, 21, and 29, 2003; August 12, 2003; May 23, 2005; August 9, 2005; September 5, 12, 19, 2005; October 3, 2005; May 11 and 15, 2006; June 5, 2006; October 1, 2006.

**Condition I (A)(1) cyanide monthly average discharge violations.** Condition I (A)(1) for cyanide specifies a maximum monthly average discharge of 4 ug/L. Teck Cominco exceeded its permissible monthly average for cyanide in September 2005, October 2005, May 2006, June 2006, July 2006, August 2006, and September 2006. The exact number of these violations is listed below in section III.

**Condition I(H)(5) Whole Effluent Toxicity daily maximum and monthly average discharge violations.** Condition I (H)(5) specifies that WET may not exceed a daily maximum of 12.2 TUc and may not exceed a monthly average of 9.7 TUc. Teck Cominco exceeded its permit for the maximum daily limit of whole effluent toxicity in August 2004.

### **III. POTENTIAL FINES FOR TECK COMINCO'S VIOLATIONS ARE IN EXCESS OF \$24,000,000.**

The Kivalina residents intend to sue Teck Cominco for all violations of the Clean Water Act. The maximum penalty per day for each violation of the Clean Water Act is \$27,500 for violations before March 15, 2004 and \$32,500 for violations after March 15, 2004 (40 CFR § 19.4). Teck Cominco's total violations of the Clean Water Act are set forth below:

	<u>Violations</u>	<u>Penalty</u>
<b>TDS</b>		
Daily, pre-2004	98	\$2,695,000
Daily, 2004-present	300	\$9,750,000
Monthly, pre-2004	98	\$2,695,000
Monthly, 2004-present	75	\$2,437,500
<b>Cyanide</b>		
Daily, pre-2004	9	\$247,500
Daily, 2004-present	10	\$325,000
Monthly, 2004-present	181	\$5,882,500
<b>WET</b>	1	\$32,500
<b>TOTAL VIOLATIONS</b>	772	
<b>TOTAL PENALTY</b>		\$24,065,000

This total of 772 violations includes 576 violations of Teck Cominco's permits since the March 2004 commencement of the litigation *Adams et al. v. Teck Cominco* in federal District Court in Anchorage.

**IV. PERSONS RECEIVING NOTICE THROUGH THIS LETTER.**

In accordance with the Clean Water Act and its regulations, with this letter, the Kivalina residents give notice of the violations of its NPDES Permit to Jim Kulas, Environment Manager, Teck Cominco Alaska; John B. Knapp, General Manager, Teck Cominco Alaska; Norman B. Keevil, Chairman, Teck Cominco Limited; Steven G. Dean, President and CEO, Teck Cominco Limited; and Sean S. Halloran, Agent for Service of Process - Teck Cominco Alaska, Hartig, Rhodes, Hoge & Lekisch, P.C. Kivalina residents also give notice to the EPA Administrator, to the EPA Regional Administrator, to the Commissioner of Alaska Department of Environmental Conservation, to the Commissioner of Alaska Department of Fish and Game, to the Alaska Attorney General, and to the US Attorney General.

**V. THE IDENTITY OF THE PERSONS GIVING THIS NOTICE.**

Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton and Joseph Swan are all residents of the Native Village of Kivalina, an Inupiaq village on the Chukchi Sea. Their homes are at the mouth of the Wulik River, downstream of the mine's Outfall 001 on Middle Fork Red Dog Creek. Their community obtains drinking water from the Wulik River, and hunts and fishes in the marine and terrestrial environment adjacent to the port and mine sites. As a result of Teck Cominco's illegal discharges, Kivalina residents believe their drinking water quality has decreased. The location and quantity of terrestrial mammals, marine mammals and fish that constitute their basic source of food has changed. Teck Cominco's violations of the Clean Water Act deprive Kivalina residents of the opportunity to exercise their traditional lifestyle without fear of illness or exposure to dangerous contaminants.

If Teck Cominco wishes to negotiate with the Kivalina residents, its attorneys should contact the attorneys for the Kivalina residents immediately. Enoch Adams, Jr., Leroy Adams, Andrew Koenig, Jerry Norton and Joseph Swan will move to amend their existing Clean Water Act lawsuit against Teck Cominco 60 days from the date of this notice.

**Noticing Parties**

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Andrew Koenig, Jerry Norton,  
and Joseph Swan  
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We look forward to talking with you about ceasing Red Dog Mine's pollution of the Kivalina environment.

Sincerely,

CENTER ON RACE, POVERTY & THE  
ENVIRONMENT



Luke W. Cole  
Edwin H. Dietrich  
Elena Gil

cc: (By Certified Mail, Return Receipt Requested)

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